

PSJ1 Exh 44

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Ohio State Board of Pharmacy 77 South High Street, Room 1702 Columbus, Ohio 43215-6126
 telephone: 614-466-4143 fax: 614-752-4836 email: exec@bop.ohio.gov

Minutes of the December 5-7, 2011
Meeting of the Ohio State Board of Pharmacy

EXHIBIT

Shaheen-19

Monday, December 5, 2011

10:00 a.m. The Ohio State Board of Pharmacy convened in Room East B, 31st Floor, of the Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio, with the following members present:

Donald M. Casar, R.Ph., *President*; Brian M. Joyce, R.Ph., *Vice-President*; Edward T. Cain, Public Member; Troy A. Gahm, R.Ph.; Richard F. Kolezynski. R.Ph.; Deborah A. Lange, R.Ph.; Kevin J. Mitchell, R.Ph.; and Michael A. Moné, R.Ph.

Also present were William T. Winsley, *Executive Director*; John Whittington, *Assistant Executive Director*; Mark Keeley, *Legislative Affairs Administrator*; Kyle Parker, *Licensing Administrator*; Chris Reed, *Compliance Supervisor*; David Rowland, *Legal Affairs Administrator*; Danna Droz, *Prescription Drug Monitoring Program Director*; and Tracy Nave, *Assistant Attorney General*.

10:03 a.m. Ms. Lange moved that the Board go into Executive Session for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Ohio Revised Code and to confer with an attorney for the Board regarding pending or imminent court action pursuant to Section 121.22(G)(3) of the Ohio Revised Code. The motion was seconded by Mr. Gahm and a roll-call vote was conducted by President Casar as follows: Cain – yes; Gahm – yes; Joyce – yes; Kolezynski – yes; Lange – yes; Mitchell – yes; Moné – yes.

11:21 a.m. The Executive Session ended and the meeting was opened to the public.

Mr. Rowland said that the following Settlement Agreements have been signed and are now effective:

R2012-101 SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY
VOLUNTARY SURRENDER WITH DISCIPLINARY ACTION
PENDING PERMANENT SURRENDER

Docket Number D-090803-004

Date Signed:
11/01/2011

s/ John Robert Stone, R.Ph.
Respondent

Date Signed:
11/01/2011

/s/ Daniel D. Connor
Attorney for Respondent

Date Signed:
12/05/2011

/s/ Donald M. Casar
President; Ohio State Board of Pharmacy

Date Signed:
12/05/2011

/s/ Tracy Marie Nave
Ohio Assistant Attorney General

R2012-102 SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY

Docket Number D-110714-197

in the matter of:

GIANT EAGLE #4098
c/o Kelly Ann Chappell, R.Ph.
351 Center Street
Chardon, Ohio 44024

Terminal Distributor Number 02-1214700

This Settlement Agreement is entered into by and between Giant Eagle #4098 and the Ohio State Board of Pharmacy, a state agency charged with enforcing the Pharmacy Practice Act and Dangerous Drug Distribution Act, Chapter 4729. Of the Ohio Revised Code.

Giant Eagle #4098 enters into this Agreement being fully informed of its rights afforded under Chapter 119. Of the Ohio Revised Code, including the right to representation by counsel, the right to a formal adjudication hearing on the issues contained herein, the right to appeal. Giant Eagle #4098 acknowledges that by entering into this Agreement it has waived its rights under Chapter 119. of the Revised Code.

WHEREAS, the State Board of Pharmacy is empowered by Section 4729.57 of the Ohio Revised Code to suspend, revoke, refuse to renew any license issued to a Terminal Distributor of Dangerous Drugs pursuant to section 4729.54 of the Revised Code, or may impose a monetary penalty on the license holder, for violation of

any of the enumerated grounds of Section 4729.57 of the Ohio Revised Code.

WHEREAS, Giant Eagle #4098 is a licensed terminal distributor of dangerous drugs in the State of Ohio.

WHEREAS, on or about July 14, 2011, pursuant to Chapter 119. of the Ohio Revised Code, Giant Eagle #4098 was notified of the allegations or charges against it, its right to a hearing, its rights in such hearing, and its right to submit contentions in writing. Further, a hearing was scheduled and continued by the Board. The July 14, 2011, Notice of Opportunity for Hearing contains the following allegations or charges:

- (1) Records of the Board of Pharmacy indicate that Giant Eagle #4098 is licensed with the State Board of Pharmacy as a Terminal Distributor of Dangerous Drugs. Records further reflect during the relevant time periods stated herein, Kelly Ann Chappell was the Responsible Pharmacist pursuant to Rule 4729-5-11 of the Ohio Administrative Code and Sections 4729.27 and 4729.55 of the Ohio Revised Code.
- (2) Giant Eagle Pharmacy #4098 did, from May 1, 2009, through January 21, 2011, fail to provide effective and approved controls and procedures to deter and detect theft and diversion of dangerous drugs, to wit: the following controlled substances and dangerous drugs were stolen from the pharmacy yet internal control procedures failed to deter or detect the theft. The drugs were stolen by an inadequately supervised technician who admitted to a Board agent that the drugs were diverted to her addicted husband and also sold to another individual.
- (3) Giant Eagle Pharmacy #4098 did, from May 1, 2009, through January 21, 2011, fail to provide effective and approved controls and procedures to deter and detect theft and diversion of dangerous drugs, to wit: the following controlled substances and dangerous drugs were stolen from the pharmacy yet internal control procedures failed to deter or detect the theft. The drugs were stolen by an inadequately supervised technician who admitted to a Board agent that the

drugs were diverted to her addicted husband and also sold to another individual.

Drug	Strength	Shortage	Percent of stock
hydrocodone with APAP	5/325	1,321	53.92
hydrocodone with APAP	5/500	(-648)	0.65
hydrocodone with APAP	7.5/325	5,237	67.49
hydrocodone with APAP	7.5/500	6,161	72.06
hydrocodone with APAP	7.5/750	30,566	57.67
hydrocodone with APAP	10/325	5,282	75.67
hydrocodone with APAP	10/500	14,586	75.19
hydrocodone with APAP	10/650	5,523	82.07
hydrocodone with APAP	10/660	17,512	82.22
hydrocodone with ibuprofen	7.5/200	1,057	52.33
carisoprodol	350	7,556	27.68
Suboxone	8	553	20.04

Such conduct is in violation of Rule 4729-9-05 of the Ohio Administrative Code.

Giant Eagle #4098 neither admits nor denies the allegations stated in the Notice of Opportunity for Hearing letter dated July 14, 2011.

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of a formal hearing at this time, Giant Eagle #4098 knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

- (A) Giant Eagle #4098 agrees to adopt and implement the policies as submitted to the Ohio State Board of Pharmacy in its letter dated September 27, 2011. These policies are incorporated into this Agreement as if fully rewritten herein.
- (B) Pursuant to Section 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy hereby imposes a monetary penalty of one thousand dollars (\$1,000.00) on Giant Eagle #4098 and payment in full is due and owing within thirty days of the mailing of this Order. The remittance should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed form to the State Board of Pharmacy, 77 South High Street, Room 1702, Columbus, Ohio 43215-6126.

Giant Eagle #4098 acknowledges that it has had an opportunity to ask questions concerning the terms of this Agreement and that all questions asked have been answered in a satisfactory manner. Any action initiated by the Board based on alleged violation of this Agreement shall comply with the Administrative Procedure Act, Chapter 119. of the Ohio Revised Code.

Giant Eagle #4098 waives any and all claims or causes of action it may have against the State of Ohio or the Board, and members, officers, employees, and/or agents of either, arising out of matters which are the subject of this Agreement. Giant Eagle #4098 waives any rights of appeal pursuant to Chapter 119. of the Ohio Revised Code.

This Agreement embodies the entire Agreement between and of the parties. There are no express or implied promises, guarantees, terms, covenants, conditions, or obligations other than those contained herein; and this agreement supersedes all previous communications, representations or agreements, either verbal or written, between the parties.

This Settlement Agreement shall be considered a public record, as that term is used in Section 149.43 of the Ohio Revised Code, and shall become effective upon the date of the Board President's signature below.

/s/ Giant Eagle #4098 c/o Kelly A. Chappell,

R.Ph.

Date Signed: 11/11/2011

Respondent

/s/ Stephen S. Zubrow

Date Signed: 11/14/2011

Attorney for Respondent

/s/ Brian M. Joyce, R.Ph.

Date Signed: 12/05/2011

Vice-President; Ohio State Board of Pharmacy (sitting as President due to recusal)

/s/ Tracy Marie Nave

Date Signed: 12/05/2011

Ohio Assistant Attorney General